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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TODD, GREGORY G

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,274

Applicant(s)

CERAMI ET AL.

Examiner

Gregory G. Todd

Art Unit

2157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 05/19/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This is a third office action in response to applicant's amendment and request for continued examination filed, 19 May 2005, of application filed, with the above serial number, on 01 August 2001 in which claims 1, 14, 15, and 17-21 have been amended. Claims 1-36 are therefore pending in the application.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Providing an answer and denying the request for service.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Providing an answer to a customer service request is not described in the specification to enable one skilled in the art to define the boundaries on this terminology. Such terminology could include, for example, a person telling a customer they cannot provide service, offering no well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2, 12-13, 16-22, 32-33 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohner (hereinafter "Rohner", 5,680,325) in view of Rakoshitz et al (hereinafter "Rakoshitz", 6,578,077).

Rohner teaches the invention, substantially, as claimed including spare network capacity planning and calculation (see abstract).

As per Claim 1, Rohner teaches a method for processing customer requests for spare capacity in a video and data network from a network element database comprising:

receiving a customer inquiry for a request for spare capacity in the video and data network from a customer requesting a service for the video and data network, wherein the request comprises a service area identifier corresponding to the customer (at least col. 5, lines 15-22, 50-67; col. 7, lines 25-57; col. 6, lines 23-36; col. 10, lines 7-16; local area being monitored, identifying certain areas with customers);

identifying equipment to check for spare capacity from the service area identifier, wherein the equipment identified is used to provide the service to the customer on the video and data network (monitoring network architecture and hardware and having

Art Unit: 2157

service activation from new or existing equipment) (at least col. 7, lines 32-57; col. 9, lines 56-65; col. 10, lines 7-26);

determining if the identified equipment has spare data and video capacity using information for the identified equipment in the network element inventory (available capacity using assignable inventory) (at least col. 7, lines 32-57; col. 9 line 41 - col. 10 line 39); and

if the equipment has spare data and video capacity, calculating spare video and data capacity for the equipment, wherein the spare video and data capacity is used to provide the service to the customer, if desired (usage data compared with capacity with customer service contract upon request) (at least col. 7, lines 32-57; col. 9 line 30 - col. 10 line 20).

Rohner fails to explicitly teach such customer service requests being handled in real-time and providing an answer for the request for spare capacity while being connected to the customer during the customer inquiry, the answer based on the spare video and data capacity. However, the use and advantages for using such a service is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Rakoshitz. Rakoshitz teaches real-time monitoring, viewing and managing of bandwidth, traffic, and performance of a network and gives the monitor management and control utilizing such information for QoS purposes (at least col. 9, lines 39-62; col. 10, lines 15-27; col. 14, lines 48-54; also col. 19 line 34 - col. 21 line 40). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Rakoshitz's system in Rohner as

Art Unit: 2157

Rohner teaches such service activation being in response to a negotiation of the services including availability. The steps of Rohner occur simultaneously and the contract is completed upon such verification of assignable inventory databases and the updating of the databases, thus Rohner inherently teaching an answer being provided to the customer based on availability (at least Rohner col. 10 lines 1-39). Thus, Rakoshitz's system would improve upon Rohner's system to allow the service contract to be completed in real-time with a monitor monitoring the dynamic capacity of Rohner's network to allow faster turnaround on such requests.

As per Claim 2, Rohner teaches the method of claim 1, wherein the video and data network comprises a Digital Subscriber Line (xDSL) network (at least col. 4, lines 50-59).

As per Claim 12, Rohner teaches the method of claim 1, wherein checking the network element database to determine if the identified equipment has spare data and video capacity comprises checking if the identified equipment has spare virtual video/data capacity (logical inventory reallocation) (at least col. 9, lines 7-55).

As per Claim 13, Rohner teaches the method of claim 1, wherein checking the network element database to determine if the identified equipment has spare data and video capacity comprises checking if the identified equipment has spare physical video/data capacity (at least col. 7 line 36 - col. 8 line 58).

As per Claim 16, Rohner teaches the method of claim 1, further comprising checking the network element database to determine if the identified equipment telephony usage is at a maximum (at least col. 3, lines 1-45).

Claims 17-22, 32-33 and 36 do not, in substance, add or define any additional limitations over claims 1-2, 12-13, and 16 and therefore are rejected for similar reasons.

6. Claims 3 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohner in view of Rakoshitz and further in view of Wetzel (hereinafter "Wetzel", 6,388,990).

Rohner and Rakoshitz (hereinafter "the combination") fail to explicitly disclose wherein the video and data network comprises a Very high data rate Digital Subscriber Line (VDSL) network. Rohner does disclose using next generation networks and ADSL networks (at least col. 4, lines 50-59). However, using certain xDSL technologies such as VDSL is disclosed by Wetzel (at least col. 2, lines 18-34). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of VDSL into the combination's system as Rohner discloses using a next generation network, suggesting higher bandwidth networks, as the medium for communications and as Wetzel discloses VDSL as being a variation of xDSL for future networks.

7. Claims 4-11, 14-15, 24-31, and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohner in view Rakoshitz and further in view of Datta et al (hereinafter "Datta", 6,209,033).

As per Claim 4, the combination teaches the method of claim 1, wherein calculating spare video/data capacity for the equipment comprises calculating hardware available minus hardware in use. The combination fails to explicitly teach the calculating of spare

Art Unit: 2157

capacity to include video and data *ports*. However, the use and advantages for using such ports is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Datta. Datta discloses many calculations, including average bandwidth usage (at least col. 9, lines 1-25; col. 12, lines 40-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Datta's ports into the combination's system as Rohner clearly is calculating usage compared with capacity and the hardware associated with the difference (at least Rohner col. 7, lines 25-57; col. 8, lines 20-25) needed for optimal differences.

As per Claim 5, the combination teaches the method of claim 4, further comprising determining possible capacity for the equipment (at least Rohner col. 7, lines 25-5).

As per Claim 6, the combination fails to disclose the method of claim 5, wherein possible capacity comprises possible video/data ports. However, the use and advantages for using such ports is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Datta. Datta discloses many calculations, including average bandwidth usage (at least col. 9, lines 1-25; col. 12, lines 40-56). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Datta's ports into the combination's system as Rohner clearly is calculating usage compared with capacity and the hardware associated with the difference (at least Rohner col. 7, lines 25-57; col. 8, lines 20-25) needed for optimal differences.

Art Unit: 2157

As per Claim 7, the method of claim 6, wherein calculating spare video/data capacity for the equipment comprises adding the possible hardware to the spare hardware capacity calculation (whether hardware installation is required) (at least Rohner col. 7, lines 25-57; col. 8, lines 6-25).

As per Claim 8, the method of claim 4, further comprising determining a number of defective hardware (at least col. 7 line 58 - col. 8 line 5).

As per Claim 9, the method of claim 8, wherein calculating spare video and data capacity for the equipment comprises subtracting the number of defective hardware from the spare video/data capacity calculation (hardware needed to reconcile request for capacity) (at least Rohner col. 7 line 58 - col. 8 line 25).

As per Claim 10, the method of claim 4, further comprising determining a number of held and pending video service orders for the service area identifier (pending equipment orders) (at least Rohner col. 8, lines 59-67).

As per Claim 11, the method of claim 10, wherein calculating spare video and data capacity for the equipment comprises subtracting the number of held and pending video service orders from the spare video/data capacity calculation (construction management and tracking of pending and available equipment) (at least Rohner col. 8 line 49 - col. 9 line 6).

As per Claim 14, the combination fails to teach the method of claim 4 further comprising determining a number of data only ports. However, the use and advantages for using data only is well known to one skilled in the art at the time the invention was made as evidenced by the teachings of Datta. Datta's system is data only and does not use video

Art Unit: 2157

services (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the use of Datta's data-only network into the combination's system as this would allow prioritized data traffic to be higher in priority than Rohner's video and data network, thus in circumstances with low capacity, low priority video could be cut-off from utilizing available bandwidth, thus increasing capacity.

As per Claim 15, Datta teaches the method of claim 14, wherein calculating spare video and data capacity for the equipment comprises returning the number of data only slots in the spare capacity calculation (at least Datta Fig. 6, 7).

Claims 24-31 and 34-35 do not add or define any additional limitations over claims 4-11 and 14-15 and therefore are rejected for similar reasons.

Response to Arguments

8. Applicant's arguments, see pp. 8-10, filed 16 May 2005, with respect to the rejection(s) of claim(s) 1-2, 12-13, 16, 21-22, 32-33 and 36 under Rohner have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Rakoshitz et al.

Applicants traverse the election/restriction requirement based on original presentation in the final office action dated 10 March 2005. Applicants have overcome

the election/restriction requirement with the claims as amended. Therefore, the requirement has been withdrawn.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Newly cited Rueda et al, Tummalapalli, Wang et al, Czarnik et al, Croslin et al, and Chapman et al, is cited for additionally teaching real-time viewing of network information including bandwidth; in addition to previously cited Fichou et al, Daley, Bowman-Amuah, Cowan et al, Klassen et al, and Liu et al are cited for disclosing pertinent information related to the claimed invention. Applicants are requested to consider the prior art reference for relevant teachings when responding to this office action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory G. Todd whose telephone number is (571)272-4011. The examiner can normally be reached on Monday - Friday 9:00am-6:00pm w/ first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571)272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2157


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gregory Todd



Patent Examiner

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